



## ANALYSIS

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1985, No.3

An Act to provide for the registration of ships and all matters related thereto

(19 July 1985)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. Short Title and Commencement - (1) This Act may be cited as the Shipping Registry Act 1985.

(2) This Act shall come into operation upon such date as the Minister may, by notice published in the Gazette, appoint.

2. Interpretation - In this Act, unless the context otherwise requires -

"Court" means the High Court;

"Government ship" means a ship that belongs to the Government or to an authority established by the Government or that is held by any person on behalf of, or for the benefit of, the government;

"Minister" means the Minister for Transport;

"National flag" means the National ensign of the Cook Islands;

"proper officer" is a person appointed in writing by the Registrar as agent;

"qualified person" means -

- (a) a person referred to in section 8 (a);
- (b) a corporation referred to in 8 (b);

"ship" includes -

- (a) in relation to the ownership of a ship, a share in the ship and any interest in the ship or share; and

- (b) every description of vessel used, or capable of being used, in navigation by water, but does not include a ship that is the lesser of 35 metres in length or 200 gross registered tons; or a ship that is, in the opinion of the Registrar, of traditional build.

"the Register" means the Register of Ships referred to in section 5;

"the Registrar" means the Registrar of Ships;

"the Regulations" means the Regulations made under this Act;

"this Act" includes the Regulations;

"tonnage certificate" means a certificate of tonnage given under section 12.

3. Act to bind the Crown - This Act shall bind the Crown but nothing in this Act renders the Crown liable to be prosecuted for an offence.

## PART II

### REGISTRATION OF SHIPS

#### Registration

4. Registrar of ships - There shall be appointed under the provisions of the Public Service Act 1975 a Registrar of ships.

5. Register of ships - (1) The Registrar shall cause to be kept the Register of Ships, in such form as the Registrar determines.

(2) The Registrar shall cause to be entered in the Register particulars of all ships registered under this Act and such other entries as may be required by this Act to be entered in the Register.

6. Provisions relating to registration - The following provisions shall apply to the registration of ships under this Act-

- (a) the property in a ship shall be divided into 64 shares;
- (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 64 persons shall be entitled to be registered at the same time as owners of any ship but this provision shall not affect the beneficial title of any number of persons or of a company represented by or claiming under or through any registered owner or joint owner;
- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares in the ship;
- (d) joint owners shall be considered as constitution one person only as regards the persons entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, in respect of which they are jointly registered; and
- (e) a corporation shall be registered as owner by its corporate name.

7. Port of registry - The port of registry of every ship registered under this Act is Avatiu.

8. Qualified person - For the purposes of this Act, a qualified person is defined as-

- (a) a person who is a Cook Islander or a permanent resident of the Cook Islands, as these terms are found in the Entry Residence and Departure Act, 1971-72, or
- (b) a company incorporated pursuant to the Companies Act 1970-71 or an overseas company as defined in that Act, or
- (c) a company incorporated or registered as a foreign company under the International Companies 1981-82, or a partnership

as defined and registered under the International Partnership Act 1984.

9. Registration of Ships - Where a ship, other than an exempt ship is not registered in another country and is owned as to one or more sixty-fourth shares by a person who is a qualified person either -

- (a) as defined by either subsection (a) or (b) of section 8 of this Act, that person shall apply for registration of the ship under this Act; or
- (b) as defined by subsection (c) of section 8 of this Act, that person may apply for registration of the ship under this Act.

10. Government ships - The Regulations may provide for the registration of Government ships.

11. Application for registration - Subject to this Part, an application for the registration of a ship shall be made in accordance with the regulations.

12. Classification of ship before registration - A ship shall not be registered unless and until -

- (a) the international tonnage measurement certificate of the ship,
- (b) evidence that the ship is currently in class with one of the classification societies contained in Schedule 1, and
- (c) evidence of compliance with the international maritime conventions contained in Schedule 2

have been lodged with the Registrar.

13. Entry of particulars in Register - The Registrar shall register a ship by entering in the Register such particulars relating to the ship as are prescribed.

## Registration Certificates

14. Grant of registration certificate - Upon the registration of a ship under Section 13, the Registrar shall grant a registration certificate in respect of the ship, in the prescribed form, containing the particulars entered in the Register relating to the ship and such other matters as are prescribed.

15. Custody of registration certificate - (1) The registration certificate of a ship shall not be used except for the purpose of the lawful navigation of the ship, and shall not be subject to detention by reason of a claim by an owner, mortgagee, charterer, operator or any other person to any title to, lien or charge on, or interest in, the ship.

(2) A person having possession or control of a registration certificate shall not fail, without reasonable excuse, to deliver the certificate on demand to the person entitled to the custody of it for the purposes of the lawful navigation of the ship; or to the Registrar, a proper officer, or any other person entitled by law to require its delivery.

(3) If, in any proceedings in respect of an offence against this section in relation to a registration certificate, the court is of the opinion that the certificate is lost, the court shall make an order to that effect and cause an office copy of the order to be served on the Registrar.

(4) In this section, "registration certificate" includes a provisional registration certificate.

16. New certificates and provisional certificates - (1) Where -

- (a) a registration certificate is mislaid, lost or destroyed; or
- (b) a registration certificate is lodged with the Registrar;

the Registrar shall, upon application made in the manner prescribed grant a new certificate in substitution of that certificate.

(2) If -

- (a) an event referred to in paragraph (1)(a) occurs while the ship concerned is at a foreign port at which there is a proper officer; or
- (b) such an event occurs while the ship concerned is at sea or at a foreign port at which there is no proper officer and, subsequently, but before arriving at Cook Islands port, the ship arrives at a foreign port in which there is a proper officer,

the proper officer at that port shall, subject to the regulations, grant a provisional registration certificate in respect of the ship in accordance with the prescribed form.

(3) Subject to sub-section (5), a provisional registration certificate granted in respect of a ship under sub-section (2) has the same effect as a registration certificate until -

- (a) the ship arrives at a Cook Islands port; or

- (b) the expiration of a period of 6 months commencing on the date on which the certificate was granted,

whichever first happens.

(4) Where a proper officer grants a provisional registration certificate under this section, he shall forward a copy of the certificate to the Registrar.

(5) If, while a provisional registration certificate granted in respect of a ship under sub-section (2) is in effect, application is made in the manner prescribed, the Registrar may, by notice in writing served on the applicant, extend, in relation to the certificate, the period referred to in paragraph (3) (b) and, in that event, the reference in that paragraph to a period of 6 months shall be read as a reference to that period as so extended.

(6) The person who has possession of a provisional registration certificate granted under sub-section (2) shall, within 30 days after the grant, lodge the certificate with the Registrar.

(7) Upon lodgement of a provisional registration certificate under sub-section (6), the Registrar shall, in his discretion -

- (a) grant a further provisional registration certificate in respect of the ship; or
- (b) grant a new registration certificate in respect of the ship.

(8) A provisional registration certificate granted under paragraph (7) (a) has the same effect as a registration certificate for such period after the date on which the certificate was granted as the Registrar specifies in the certificate.

17. Provisional certificates for ships becoming entitled to be registered when abroad - (1) If -

- (a) while a ship is at a foreign port at which there is a proper officer, it becomes a ship entitled to be registered; or
- (b) while a ship is at sea or at a foreign port at which there is no proper officer it becomes a ship entitled to be registered and, subsequently, but before arriving at a Cook Islands port, it arrives at a foreign port at which there is a proper officer,

the proper officer at that port may, subject to the regulations, grant a provisional registration certificate in respect of a ship in accordance with the prescribed form.

(2) Subject to sub-section (4) a provisional registration certificate granted in respect of a ship under this section has the same effect as a registration certificate, and, for the purpose of this Act and of the lawful navigation of the ship, the ship shall be deemed to be registered, until -

- (a) the ship arrives at a Cook Islands port; or
- (b) the expiration of a period of 6 months commencing on the date on which the certificate was granted,

whichever first happens.

(3) Where a proper officer grants a provisional registration certificate under this section, he shall forward a copy of the certificate to the Registrar.

(4) If, while a provisional registration certificate granted in respect of a ship under sub-section (1) is in effect, application is made in the manner prescribed, the Registrar may, by notice in writing served on the applicant, extend in relation to the certificate the period referred to in paragraph (2) (b) and, in that event, the reference in that paragraph to a period of 6 months shall be read as a reference to that period as so extended.

(5) The person who has possession of a provisional registration certificate granted in respect of a ship under sub-section (1) shall, within 10 days after the ship first arrives at a Cook Islands port after the grant, lodge the certificate with the Registrar.

(6) Upon lodgement of a provisional registration certificate under sub-section (5), the Registrar may grant a further provisional registration certificate in respect of the ship.

(7) A provisional registration certificate granted in respect of a ship under sub-section (6) has the same effect as a registration certificate for such period after the date on which the certificate was granted as the Registrar specifies in the certificate and, for the purposes of this Act and of the lawful navigation of the ship, the ship shall be deemed to be registered during that period.

18. Change in ownership of ship or share - (1) Where a change occurs in the registered ownership of a ship or a share in a ship, the person having possession of the ship's registration certificate shall, in such manner, and within such time after the change occurs as are prescribed, lodge the certificate with the Registrar, together with a statement in accordance with the regulations setting out particulars of the change.

(2) As soon as practicable after lodgement of the registration certificate and statement, the Registrar shall endorse on the certificate, and enter in the Register, particulars of the change of ownership.

19. Improper use of certificate - A person who, in relation to a ship, whether or not it is a registered ship, uses, or permits the use of, a registration certificate, provisional registration certificate or temporary pass not legally granted and in force under this Act in respect of the ship is guilty of an offence.

#### Identification

20. Marking of ship - (1) A ship shall not be registered until it has been marked in accordance with the regulations.

(2) Subject to sub-section (3), a person shall not conceal, remove, alter, deface, or obliterate, or suffer any person under his control to conceal, remove, alter, deface, or obliterate, any marking that is on a registered ship in accordance with the regulations.

(3) Sub-section (2) does not apply in relation to anything done as authorized by the regulations or done for the purpose of escaping capture by an enemy.

(4) If the markings referred to in sub-section (1) are not maintained, the owner and master are guilty of an offence.

21. Name of registered ship and change of name - (1) A person shall not describe a registered ship by any name other than the name by which the ship is for the time being registered.

(2) Subject to this Act, application may be made to the Registrar, in the manner prescribed, for a change in the name of a registered ship.

(3) If -

(a) the name proposed for a ship in an application for the registration of the ship; or

(b) the new name proposed for a registered ship in an application under sub-section (2),

is a prescribed name, or a name included in a prescribed class of names the Registrar shall disallow the name.

(4) Where the Registrar grants an application under sub-section (2) -

(a) he shall cause the new name to be entered in the Register and endorsed on the ship's registration certificate; and

(b) this section shall apply in relation to the marking of the new name on the ship as if the ship had been registered by that name.

22. Power of Minister to disallow name proposed for ship - The Minister may, by notice in writing given to the Registrar, disallow the name proposed for a ship in an application under section 21(2) if the Minister is of the opinion that the description of the ship by that name is likely to prejudice the international relations of the Cook Islands.

#### Nationality and National Colours

23. Nationality - Registered ships shall, for all purposes, be taken to be Cook Islands ships and to have Cook Islands nationality.

24. National colours - (1) It is hereby declared that the national colours for Cook Islands ships are the national ensign as described in the Constitution of the Cook Islands.

(2) A person shall not, in relation to a ship required to be registered that is not registered, use, or permit the use of, the national ensign.

(3) Where, in relation to a ship, there is a contravention of, or failure to comply with, a provision of this section, the master and owner of the ship are each guilty of an offence.

(4) Upon application made in the manner prescribed by the owner or operator of a ship to which section 23 applies, the Registrar shall grant to the applicant a certificate stating that the ship is entitled to fly the national ensign in accordance with this section.

(5) A certificate granted under sub-section (4) is, for all purposes prima facie evidence of the facts stated therein.

(6) A registered ship may at any time and shall as and when required by the Regulations, fly the ensign.

25. Improperly assuming Cook Islands nationality - If, except for the purposes of escaping capture by an enemy, the master or owner of a ship that is not a Cook Islands ship does anything, or permits anything to be done, for the purpose of causing the ship to appear to be a Cook Islands ship, the ship is subject to forfeiture under this Act, and the master and owner are each guilty of an offence.

26. Concealing Cook Islands nationality - If, except for the purpose of escaping capture by an enemy, the master or owner of a Cook Islands ship does anything, or permits anything to be done, for the purpose of -

- (a) concealing the nationality of the ship from any person entitled by a law of the Cook Islands to inquire into the nationality of the ship;
- (b) deceiving any such person; or
- (c) causing the ship to appear not to be a Cook Islands ship,

the ship is subject to forfeiture under this Act, and the master and owner are each guilty of an offence.

### PART III

#### TRANSFERS, TRANSMISSIONS AND MORTGAGES

27. Interpretation - In this Part, "ship" means a registered ship.

28. Transfer of ship, etc. - (1) Subject to section 29 a ship or a share in a ship shall be transferred by a bill of sale made in accordance with the Regulations.

(2) Where a ship or a share in a ship is so transferred, the Registrar shall, as soon as practicable after the lodgement of the bill of sale together with a declaration of transfer made by the transferee under sub-section (3), register the bill of sale by entering in the Register the name of the transferee as owner of the ship or share and shall endorse on the bill of sale the fact of the entry having been made, together with the date and time of the making of the entry.

(3) A declaration of transfer for the purposes of sub-section (2) shall be made in accordance with the Regulations and shall include -

- (a) a statement specifying, where the transferee is a body corporate, the country in which it was incorporated; and
- (b) a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be a Cook Islands owned ship by reason only of the transfer.

(4) Bills of sale lodged under this section shall be registered in the order of their lodgement.

29. Transmission of ship, etc, by operation of law - (1) Where a ship or a share is transmitted to a person by any lawful means other than by transfer under section 28, the Registrar shall as

soon as practicable after the lodgement of a declaration of transmission made by that person under sub-section (2), together with such evidence of the transmission as is prescribed, enter in the Register the name of that person as owner of the ship or share.

(2) A declaration of transmission for the purposes of sub-section (1) shall be made in accordance with the Regulations and shall include -

- (a) a statement specifying, where the person is a body corporate, the country in which it was incorporated; and
- (b) a statement that, to the best of the knowledge and belief of the person making the declaration, the ship concerned will not cease to be a Cook Islands owned ship by reason only of the transmission.

30. Mortgage of ship, etc. - (1) A ship or a share in a ship may be made a security for the discharge of an obligation by way of mortgage under this Act.

(2) The instrument of such a mortgage shall be made in accordance with the Regulations.

(3) As soon as practicable after the lodgement of a mortgage instrument so made, the Registrar shall register the mortgage by entering particulars of the mortgage in the Register and shall endorse on the instrument the fact of the entry having been made, together with the date and time of the making of the entry.

(4) Mortgage instruments lodged under this section shall be registered in the order of their lodgement.

31. Priority of mortgages - Where two or more mortgages are registered in respect of the same ship or share in a ship, the priority among the mortgagees is in accordance with the order of registration of the mortgages, irrespective of the dates upon which they were made or executed and notwithstanding any express, implied or constructive notice.

32. Mortgage not to change ownership - A mortgage of a ship or of a share in a ship does not have the effect of the mortgage becoming, or the mortgagor ceasing to be, owner of the ship or share except to the extent necessary to make the ship or share available as a security under the mortgage.

33. Mortgagee to have power of disposal - A mortgagee of a ship or of a share in a ship has power absolutely to dispose of the ship or share and to give effectual receipts in respect of the disposal, but where there are two or more mortgages of the same ship or share, a subsequent mortgagee shall not, except under the order of the High Court, dispose of the ship or share without the consent of every prior mortgagee.

34. Transfer of mortgage - (1) A mortgage of a ship or of a share in a ship may be transferred by an instrument of transfer made in accordance with the regulations.

(2) Where a mortgage is so transferred, the Registrar shall, as soon as practicable after the lodgement of the instrument, enter in the Register the name of the transferee as the mortgagee of the ship or share, the subject of the mortgage, and endorse on the instrument the fact of the entry having been made, together with the date and time of the making of the entry.

35. Transmission of mortgage by operation of law - Where the interest of a mortgagee in a mortgage of a ship or of a share in a ship is transmitted to a person by any lawful means other than by a transfer under section 36, the Registrar shall, as soon as practicable after the lodgement of a declaration of transmission made by that person in accordance with the regulations, together with such evidence of the transmission as is prescribed, enter in the Register the name of that person as mortgagee of the ship or share.

36. Discharge of mortgage - Where a mortgage is discharged, the Registrar shall, as soon as practicable after the lodgement of the mortgage instrument, together with such evidence of the discharge of the mortgage as is prescribed, make an entry in the Register to the effect that the mortgage has been discharged and, on that entry being made, any interest of the mortgagee under the mortgage vests in the person in whom, having regard to any intervening acts and circumstances, it would have been vested if the mortgage had not been made.

37. Powers of disposal by owner - The owner of a ship or of a share in a ship has power, subject to this Act and to any rights and powers appearing in the Register to be vested in any other person, absolutely to dispose of the ship or share and to give effectual receipts in respect of the disposal.

38. Equities not excluded - Subject to sections 33 and 37, beneficial interests may be enforced by or against the owner or mortgagee of a ship or of a share in a ship in respect of his interest in the ship or share in the same manner as in respect of any other personal property.

#### PART IV

##### ADMINISTRATION

39. Registrar of ships - The Registrar of Ships shall be an employee of the Department of Trade Labour and Transport.

40. Functions and powers of Registrar - (1) In addition to the functions conferred by other provisions of this Act, the functions of the Registrar are to maintain the Register and, for that purpose -

- (a) to receive and record all information and documents required or permitted to be lodged with the Registrar under this Act;
- (b) to grant, issue, vary or revoke such certificate and other documents as are required or permitted to be granted or issued under this Act; and
- (c) to issue copies of, and extracts from, any such certificates and other documents and entries in the Register.

(2) The Registrar has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of his functions including, but without limiting the generality of the foregoing, such powers for and in relation to requiring the furnishing of information and documents (including the delivery of certificates and other documents granted or issued under this Act) as are provided by the Regulations.

41. Acting Registrar - (1) There may be appointed an officer of or employee in the Cook Islands Public Service to act as Registrar during a vacancy in the office of Registrar or whether or not an appointment has previously been made to the office.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment

(3) While a person is acting as the Registrar under this section, he has and may exercise all the powers, and shall perform all the functions and duties, of the Registrar under this Act or any other law.

(4) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his appointment has not arisen, that there is a defect or irregularity in or in connection with his appointment that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

42. Delegation by Minister - (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of or employee in the Cook Islands Public Service any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate shall for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

43. Delegation by Registrar - (1) The Registrar may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of or employee in the Cook Islands Public Service any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate shall, for the purposes of this Act, be deemed to have been exercised by the Registrar.

(3) A delegation under this section does not prevent the exercise of a power by the Registrar.

44. Registration Office - (1) For the purposes of this Act -

(a) there shall be a Cook Islands Shipping Registration Office; and

(b) the Minister may, by notice published in the Gazette, establish branch offices of that office.

(2) The Registration Office, and the branch office established under paragraph (1)(b), shall be at such respective places as are determined by the Minister by notice published in the Gazette.

45. Seal of Registration Office and signature of Registrar -

(1) There shall be a seal of the Cook Islands Shipping Registration Office, in a form determined by the Minister, which shall be under the control of the Registrar.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Registration Office affixed to a document and shall presume that it was duly affixed.

(3) Where a signature on a document purports to be the signature of the Registrar or of a person empowered to sign the document by virtue of a delegation under section 45 it shall be presumed, until the contrary is proved, that the signature is that of a person who, at the relevant time, was holding or performing the duties of, the office of Registrar or was so empowered to sign that document, as the case may be.

## PART V

### THE REGISTER OF SHIPS

46. Cook Islands Register of Ships - (1) All matters required or permitted by this Act shall be entered in the Register.

(2) The Register and copies of the Register, or of such part or parts of the Register as the Minister directs, shall be kept at such places as the Minister directs.

47. Inspection of Register - A person may on payment of the prescribed fee, inspect the Register at any reasonable time during the hours when the Registration Office, or branch office, as the case may be, is open for business and, on payment of the prescribed fee, is entitled to be furnished with a copy of or extract from any entry in the Register.

48. Obsolete or incorrect entries in Register - (1) Where -

- (a) in relation to a particular ship, no entry or amendment of an entry has been made in the Register for such period as is prescribed for the purposes of this section; and
- (b) the Minister has reason to suspect that -
  - (i) any particulars entered in the Register in relation to the ship, other than particulars relating to a mortgage, are incorrect; or
  - (ii) in relation to the ship, any notice, information or document in relation to which an entry in the Register is required by this Act to be made has not been lodged with the Registrar within the period referred to in paragraph (a); or
  - (iii) the ship has been lost (whether actually or constructively), taken by an enemy, burnt or broken up,

the Minister may, by notice in writing served on the registered agent or any owner of the ship, require him to furnish to the Minister, within a specified period (not being less than 30 days) after the date of service of the notice, such information and documents relating to the ship as are specified in the notice.

(2) If -

- (a) the person on whom a notice is served under sub-section (1) fails to furnish to the Minister, within the period specified in the notice, the information and documents specified in the notice; or

- (b) upon the furnishing of any information and documents in pursuance of such a notice, the Minister is of the opinion that the circumstances justify his so doing,

the Minister may, by notice in writing give the Registrar such direction as he thinks fit with respect to the closure of the registration relating to the ship or with respect to any entry or amendment of an entry to be made in the Register.

(3) The Registrar shall comply with a direction given under sub-section (2) and, where the Minister directs the closure of the registration relating to a ship -

- (a) if the Minister states in the direction that he is of the opinion that the ship has been lost (whether actually or constructively), taken by an enemy, burnt or broken up - the Register of that statement, and the registration of the ship shall thereupon be deemed to be closed except so far as it relates to any unsatisfied mortgage of the ship; or
- (b) in any other case, section 56 applies as if the ship had ceased to be entitled to be registered and the direction were a notice under sub-section 56(1) stating that fact.

49. Rectification of Register - (1) If -

- (a) an entry is omitted from the Register;
- (b) an entry is made in the Register without sufficient cause;
- (c) an entry wrongly exists in the Register; or
- (d) there is an error or defect in an entry in the Register,

whether or not by reason of a decision of an officer (including a decision that the officer was empowered by this Act to make) a person aggrieved or the Register may apply to the High Court for rectification of the Register, and the Court may make such order as it thinks fit directing the rectification of the Register.

(2) Without limiting the generality of paragraph (1)(a), the reference in that paragraph to an entry omitted from the Register shall be read as including a reference to a matter that is required or permitted by this Act to be entered, or to remain, in the Register, but is not entered in, or is removed from, the Register.

(3) A Court may, in proceedings under this section, decide any question that it is necessary or expedient to decide in connection with the rectification of the Register.

(4) Notice of an application under this section by a person aggrieved shall be served on the Registrar, who may appear and be heard, and shall appear if so directed by the Court.

(5) An office copy of an order under this section shall be served on the Registrar, and the Registrar shall, upon receipt of the order, rectify the Register accordingly.

50. Correction of clerical errors in Register - The Registrar may correct, or cause to be corrected, any clerical error or obvious mistake in the Register.

51. False entries in Register - A person shall not wilfully make or cause to be made a false entry in the Register.

#### PART VI

#### MISCELLANEOUS

52. Interpretation - In this Part -

"owner", except in sections 54 and 63, means in relation to Cook Islands owned ship - the registered owner of the ship;

"unregistered ship" means a ship not registered under this Act or under the law of a foreign country.

53. Liabilities of ships not registered - (1) A ship required to be registered that is not registered -

- (a) shall not be recognized as a Cook Islands ship; and
- (b) is not entitled to any benefits, privileges, advantages or protection usually enjoyed by a registered ship.

(2) For the purpose of any law of the Cook Islands providing for -

- (a) the payment of fees or other charges;
- (b) the liability to fines and forfeiture; or
- (c) the punishment of offences committed on board a ship, or by any person belonging to a ship,

a ship to which sub-section (1) applies shall be dealt with in the same manner in all respects as if the ship were registered.

54. Registered Agent - (1) There shall be entered in the Register in respect of every registered ship the name and address of the person who is, for the time being -

- (a) the managing owner; or
- (b) in the case of a ship without a managing owner, the ship's agent or other person who has the management of the ship.

(2) Where a change occurs in the person, or the address of the person, referred to in sub-section (1) in relation to a registered ship -

- (a) the owner of the ship; or
- (b) in the case of a ship to which paragraph (1)(b) applies, the person whose name appears in the Register,

shall, unless a notice of the change has already been lodged under this sub-section, lodge with the Registrar, within 30 days after the change occurs, a notice of the change in the prescribed form.

55. Alteration to ships - (1) Where a registered ship is so altered as not to correspond with the particulars relating to the ship's tonnage or description contained in the Register, the registered agent shall give notice of the alteration, in such manner, and within such time, as are prescribed -

- (a) if the alteration is made at a foreign port at which there is a proper officer - to the proper officer at that port; or
- (b) if the alteration is made outside the Cook Islands while the ship is at sea or at a foreign port at which there is no proper officer and, subsequently, but before arriving at a Cook Islands port, the ship arrives at a foreign port at which there is a proper officer - to the proper officer at the first such port at which the ship so arrives; or
- (c) in any other case - to the Registrar, and -
- (d) where a notice of alteration is so given to a proper officer - the proper officer shall, subject to the Regulations, grant a provisional registration certificate in respect of the ship in accordance with the prescribed form; or
- (e) where a notice of alteration is so given to the Registrar - the Registrar shall, subject to Part II, enter the alteration in the Register in accordance with the regulations and grant a new registration certificate in respect of the ship.

(2) Subject to sub-section (4), a provisional registration certificate granted in respect of a ship under sub-section (1) has the same effect as a registration certificate until -

- (a) the ship arrives in a Cook Islands port; or
- (b) the expiration of the period of 6 months commencing on the date on which the certificate was granted,

whichever first happens.

(3) Where a proper officer grants a provisional registration certificate under this section, he shall forward a copy of the certificate to the Registrar together with a statement in accordance with the Regulations setting out particulars relating to the grant of the certificate.

(4) If, while a provisional registration certificate granted in respect of a ship under sub-section (1) is in effect, application is made in the manner prescribed, the Registrar may, by notice in writing served on the applicant extend, in relation to the certificate, the period referred to in paragraph (2)(b) and, in that event, the reference in that paragraph to a period of 6 months shall be read as a reference to that period as so extended.

(5) The person who has possession of a provisional registration certificate granted in respect of a ship under sub-section (1) shall lodge the certificate with the Registrar within 60 days.

(6) Upon lodgement of a provisional registration certificate under sub-section (5), the Registrar shall, subject to Part II, enter the alteration in the Register in accordance with the regulations and grant a new registration certificate in respect of the ship.

(7) Where the notice is not given in respect of a ship within a particular time as required by sub-section (1), the obligation to give notice as required by that sub-section continues, notwithstanding that that time has passed, until that notice is so given.

(8) Where a notice is not given in respect of a ship as required by this section, the owner of the ship is, in respect of each day during which the notice is not so given (including the day of a conviction under this sub-section or any subsequent day) guilty of an offence.

56. Ship lost, etc, or ceasing to be entitled to be registered -

(1) In the event of a registered ship -

(a) being lost (whether actually or constructively),  
taken by an enemy, burnt or broken up; or

(b) ceasing to be entitled to be registered,

the owner of the ship shall, immediately after obtaining knowledge of the event, unless notice has already been given to the Registrar under this sub-section, give notice in writing of the event to the Registrar.

(2) Where the Registrar receives a notice under sub-section (1) relating to a ship, he shall make an entry in the Register of the event to which the notice relates.

(3) Where an entry has been made in the Register under sub-section (2) in respect of a ship -

(a) if the entry is in respect of a ship that  
has been lost (whether actually or constructively),  
taken by an enemy, burnt or broken up - the  
registration of the ship shall be deemed to be  
closed except so far as it relates to any un-  
satisfied mortgage of the ship; and

(b) if the entry is in respect of a ship that has  
ceased to be entitled to be registered - the  
registration of the ship shall, subject to  
this section, be deemed to be closed.

(4) Where a ship, in relation to which the Registrar has received a notice under sub-section (1) stating that the ship has ceased to be entitled to be registered, is subject to an unsatisfied mortgage or mortgages -

(a) the registration of the ship, so far as it  
relates to the mortgage or mortgages, shall,  
subject to sub-sections (5) and (6), not be  
deemed to be closed; and

(b) the Registrar shall give notice in writing  
to the mortgagee, or each mortgagee, as the  
case may be, that he has received a notice  
under sub-section (1) stating that the ship  
has ceased to be entitled to be registered.

(5) Subject to this section, where the Registrar gives a notice under sub-section (4) to the mortgagee or mortgagees of a ship, the registration of the ship, so far as it relates to the mortgage or mortgages, shall be deemed to be closed at the expiration of a period of 60 days after the date of the notice.

(6) Where a mortgagee who has received a notice under sub-section (4) makes an application to the High Court within the period of 60 days after the date of the notice or within such extended time as the Court, on application made either before or after the expiration of that period, allows, the Court may do all or any of the following namely -

- (a) order that the ship and the ship's equipment be sold; or
- (b) make such other orders for and in relation to the distribution of the proceeds of the sale as it thinks fit; and
- (c) make such orders and give such directions with respect to the closure of the registration of the ship as it thinks fit (including in the case of an application for an extension of time, an order that the registration shall not be deemed to be closed for such period as the Court determines).

(7) Notice of an application made under sub-section (6) (includes an application for an extension of time) shall be served on the Registrar.

(8) An order under sub-section (6) may be on such terms and conditions as to costs and otherwise as the Court thinks fit.

(9) The Registrar shall give effect to any orders and directions given by the Court under this section so far as they relate to the Register..

(10) Where the registration of a ship is closed or deemed to be closed under this section, the person having possession of the registration certificate or provisional registration certificate relating to the ship shall deliver the certificate to the Registrar in accordance with the regulations.

(11) Nothing in this section shall take to prejudice any rights of a mortgagee existing apart from this section.

57. Power to inquire into ownership of registered ship - (1) Where the Minister has reason to suspect that a registered ship is not entitled to be registered, he may, by notice in writing served on the registered agent of the ship, require him to furnish to the Minister, within a specified period (not being less than 30 days) after the date of service of the notice, evidence of the ownership of the ship.

(2) If the registered agent of a ship on whom a notice is served under sub-section (1) fails to furnish to the Minister, within the period specified in the notice, evidence to the satisfaction of the Minister that the ship is entitled to be registered, the Minister may, by notice in writing given to the Registrar, direct that the registration relating to the ship be closed and, upon receipt of such a notice by the Registrar, section 56 applies as if the ship had ceased to be entitled to be registered and the notice were a notice under sub-section 56 stating that fact.

58. Unregistered ships obliged to be registered not to leave the Cook Islands - (1) An unregistered ship obliged to be registered shall not depart from a Cook Islands port to a place outside the Cook Islands.

(2) The master and owner of a ship that departs from a Cook Islands port in contravention of sub-section (1) are each guilty of an offence.

(3) A Collector of Customs shall not grant a Certificate of Clearance in respect of an unregistered ship entitled to be registered that is about to depart from a Cook Islands port to a place outside the Cook Islands.

59. Proceedings on forfeiture - (1) Where a ship is subject to forfeiture under this Act, an officer may seize and detain the ship and the Minister may apply to the High Court for an order under sub-section (2).

(2) Upon application being made under sub-section (1) in relation to a ship, the Court may order the ship and its equipment to be forfeited to the Cook Islands Government.

(3) Anything forfeited under this section becomes the property of the Cook Islands and may be sold or otherwise dealt with as the Minister thinks fit.

(4) In this section, "officer" means -

(a) an officer or employee of the Cook Islands appointed by the Minister by writing signed by him to be an officer for the purpose of this section; or

(b) a member or temporary member of the Cook Islands Police.

60. Detention of ships - (1) Where it is provided by this Act that a ship may be detained, the ship may be detained by an officer as defined in section 59.

(2) Where a ship detained under this Act goes to sea before it is released from detention by a competent authority, the owner and master of the ship are each guilty of an offence.

(3) A Collector of Customs shall not grant a Certificate of Clearance in respect of a ship that is detained under this Act.

61. Taking officers to sea - If an officer is taken to sea in a ship without his consent, the master and owner are each guilty of an offence and, in addition to any penalty for that offence, are jointly and severally liable to pay all expenses incidental to the officer's return.

62. False statements, etc. - (1) A person who, by means of a statement that he knows to be false or misleading, or by means of a document that to his knowledge contains information that is false or misleading, causes, or attempts to cause, an officer to do, or refrain from doing, any act or thing in the exercise of powers, or the performance of duties or functions, under this Act is guilty of an offence.

(2) A person shall not -

(a) make to an officer a statement, whether orally or in writing; or

(b) present to an officer a statement in writing, knowing it to be false or misleading in a material particular.

(3) For the purposes of the application of this section in relation to a corporation, but without prejudice to the liability of any person other than the corporation -

- (a) a statement made, or presented, or otherwise used, by a person acting on behalf of the corporation, shall be deemed to have been made, presented or otherwise used by the corporation; and
- (b) the knowledge of any person employed by, or concerned in the management of, the corporation shall be deemed to be knowledge of the corporation.

63. Offences - (1) A person who contravenes or fails to comply with sections 15(1) or (2), 16(6), 17(5), 18(1), 19, 20(2), 21(1), 23(1), 24(3), 51, 54(2), 55(5), 56(1), 56(10) is guilty of an offence.

(2) Where the owner of a ship is guilty of an offence against sub-section 20(2), 24(3), 26, 55(8), 56(1), or 61 the person who is the registered agent of the ship by virtue of section 54(1) (a) or (b) shall be deemed to be also guilty of that offence and is punishable accordingly.

(3) Except where a provision of this Act otherwise provides, the punishment for an offence against this Act is -

- (a) if the offender is a natural person, a fine not exceeding \$2,000; or
- (b) if the offender is a body corporate, a fine not exceeding \$5,000.

(4) An offence against section 19, 20, 26, or 62(1) is an offence and is punishable on conviction -

- (a) if the offender is a natural person, by a fine not exceeding \$5,000; or
- (b) if the offender is a body corporate, by a fine not exceeding \$20,000.

(5) Where a corporation is guilty of an offence against this Act, a director, manager, secretary, or other officer of the corporation who is in any way by act or omission directly or indirectly, knowingly concerned in or party to the offence, shall be deemed to be also guilty of that offence and is punishable accordingly.

64. Joinder of charges and penalties for certain offences -

(1) Charges against the same person for any number of offences against section 20(2) or 55(8) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.

(2) If a person is convicted of two or more offences referred to in sub-section (1), being offences related to a failure to do the same act or thing, the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

65. Admissibility of documents in evidence - (1) A document declared by this Act (including sub-section (4) to be admissible in evidence is, on mere production, admissible in evidence in any proceedings as prima facie evidence of any matter stated in the document in pursuance of this Act or in pursuance of any duty under this Act and of the fact that it was signed by the person by whom it purports to be signed.

(2) The Registrar may, subject to this Act, supply copies of, or extracts from, any entry in the Register or any document forming part of or associated with the Register, and certify them by writing signed by him and sealed with the seal of the Registration Office.

(3) A document purporting to be a copy or extract supplied under sub-section (2) is admissible in evidence.

66. Review of certain decisions - Applications may be made to the High Court for review of -

- (a) a decision of the Registrar under sections 16(5), 17(4), 17(6), 55(3), 55(4); or
- (b) a decision of a proper officer under section 17(1).

67. References in other laws - In any law of the Cook Islands (other than a law declared by the regulations to be a law to which this section does not apply) or any instrument (including rules, regulations or by-laws) having effect under such a law, except so far as the context otherwise requires -

- (a) a reference, however expressed, to a ship registered in the Cook Islands shall be read as a reference to a registered ship; and
- (b) a reference, however expressed, to the certificate of registry of a ship shall be read as a reference to the registration certificate, or provisional registration certificate, as the case may be, of the ship; and
- (c) a reference, however expressed, to the port of registry of a ship registered in the Cook Islands shall be read as a reference to the home port of a registered ship selected or changed in accordance with the regulations.

68. Regulations - (1) The Queen's Representative may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of sub-section (1), the regulations may make provisions for and in relation to -

- (a) the manner in which, and the time within which, applications under this Act are to be made;
- (b) the documents and information to be furnished by applicants in connection with, or in support of, applications under this Act;

- (c) the keeping of the Register and copies of the Register, or a part or parts of the Register;
- (d) the entries to be made in the Register;
- (e) the manner in which, and the time within which, documents and information are to be lodged, including provision empowering the Registrar -
  - (i) to direct a person who has lodged, or is seeking to lodge, any document or information to do such things as are necessary to ensure that it is in accordance with the requirements of this Act; and
  - (ii) to treat any document or information as not having been lodged until it is in accordance with the requirements of this Act;
- (f) the registration (whether by way of entry in the Register or otherwise) of documents and information;
- (g) the re-registration of ships entitled to be registered, the registration of which under this Act, or under the previous law, has been closed;
- (h) the registration of Government ships;
- (i) the closure of the registration of ships;
- (j) the qualifications required of, and other requirements relating to, registered agents;
- (k) the verification, by statutory declaration, of information and documents required for the purpose of this Act;
- (l) the retention or return by the Registrar of documents lodged in accordance with this Act;
- (m) the selection and change of home ports for registered ships;
- (n) the matters to be recorded or endorsed on registration certificates, provisional registration certificates, and temporary passes;
- (o) the marking of ships for the purposes of section 20;
- (p) the making of any declaration or the doing of anything required or permitted by this Act to be made or done in the name and on behalf of a person incapable of making such a declaration or doing any such thing by reason of infancy, lunacy or other disability;
- (q) the manner in which instruments, notices, and other documents under this Act may be given to, or served on, persons;
- (r) the payment of fees and expenses to persons required under this Act to attend and give evidence or make declarations before the Registrar or other persons;

- (s) the imposition and recovery of fees in respect of -
    - (i) the making of applications under this Act;
    - (ii) the lodging and registration of documents or information;
    - (iii) the registration and re-registration of ships;
    - (iv) the issue of registration certificates, provisional registration certificates, and temporary passes; and
    - (v) the supplying of copies of, or extracts from, entries in the Register or documents forming part of, or associated with, the Register;
  - (t) the conduct of any business relating to the Registration Office;
  - (u) the declaration of specified documents, or of documents included in specified classes of documents, to be admissible in evidence for the purpose of section 10;
  - (v) the form of any instrument, notice, or other document permitted or required to be issued, furnished, lodged, or registered for the purposes of this Act;
  - (w) the provision of radios on ships and all matters relating thereto, whether or not such ships are registered under this Act or are exempted under section 2; and
  - (x) any matter incidental to or connected with any of the foregoing.
- (3) The Regulations may provide that a specified provision of this Act does not apply, or applies with specified modifications in relation to Government ships.
- (4) The power conferred by sub-section (3) to make modifications by regulations includes the power to limit any matter or add any new matter.
- (5) The regulations may provide, in respect of any offence against the Regulations, for the imposition of a fine not exceeding \$500.
- (6) The power to make regulations conferred by this Act shall not be taken, by implication, not to include the power to make provision for or in relation to a matter by reason only of the fact that -
- (a) provision is made by this Act in relation to that matter or another matter; or
  - (b) power is expressly conferred by this Act to make provision by regulation for or in relation to another matter.

(7) The power to make regulations conferred by this Act may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes, or case; and
- (b) so as to make, with respect to the cases in relation to which it is exercised, the same provision for all those cases or a different provision for different cases or classes of case.

69. Repeals and Revocation (1) The following Ordinances are hereby repealed:

- the Radio on Ships Ordinance 1961
- the Shipping Ordinance 1963, as to parts II, III, IV, and V

(2) the Shipping Rules 1964/65 are hereby revoked.

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This Act is administered in the Department of Trade Labour and Transport

## SCHEDULE 1

No ship shall be registered or re-registered unless at the time of registration or re-registration such vessel is classed by one of the following classifications societies:

American Bureau of Shipping

Bureau Veritas

Det Norske Veritas

Germanischer Lloyd

Lloyd's Register of Shipping

Nippon Kaiji Kyokai

## SCHEDULE 2

Ships registered under this Act shall maintain the standards required by the following International Conventions, and revisions to those conventions:

- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (As specified in the South Pacific Uniform Maritime Standards Code, Volume 1 May 1985)
- International Convention for the Safety of Life at Sea (Solas), 1974 and various Protocols,
- International Convention on Load Lines, 1966,
- Convention on the International Regulations for Preventing Collisions at Sea, 1972,
- International Convention on Tonnage Measurements for Ships, 1969.